

ESB 5236 - H AMD TO JUDI COMM AMD(H2276.2/13) **379**

By Representative Shea

NOT ADOPTED 04/12/2013

1 On page 5, after line 22 of the striking amendment, insert the
2 following:

3 "NEW SECTION. Sec. 10. REBUTTABLE PRESUMPTION OF ACTUAL MALICE.

4 (1) If a defendant in an action governed by this chapter has
5 issued five or more corrections or clarifications with respect to the
6 person allegedly defamed, the defendant is presumed to have acted with
7 actual malice. The presumption of actual malice may only be rebutted
8 upon a showing by clear and convincing evidence that the alleged
9 defamatory statement was published without any knowledge of falsity
10 and without reckless disregard for the truth. Corrections or
11 clarifications issued by the defendant may not be used by the
12 defendant for purposes of rebutting the presumption.

13 (2) If the presumption of actual malice applies, and the defendant
14 fails to rebut it, the person may recover damages for injury to
15 reputation and all other damages permitted by law, regardless of
16 provisions in sections 3(2), 4(2), 5, and 6(3) of this act that might
17 otherwise operate to limit or preclude such damages."
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19 Renumber the remaining sections consecutively and correct any
20 internal references accordingly.

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EFFECT: Provides that a rebuttable presumption of actual malice arises if a defendant has issued five or more corrections or clarifications with respect to the person allegedly defamed. Allows the presumption to be rebutted upon a showing by clear and convincing evidence that the statement was published without any knowledge of falsity and without reckless disregard for the truth. Prohibits the defendant from using its corrections or clarifications for purposes of rebutting the presumption. Permits, in a situation

where the defendant fails to rebut the presumption of actual malice, the person to recover damages for injury to reputation and all other damages permitted by law, regardless of other provisions in the act that might otherwise limit or preclude the recovery of such damages.

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